

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

JOSE EDUARDO CASTRO-QUIRINO,

Petitioner,

vs.

Civ. No. 03-0753 MV/DJS

LANE BLAIR, Warden,

Respondent.

**ORDER**

**THIS MATTER** comes before the Court on Petitioner's Motion for Summary Judgment, filed August 6, 2003, [**Doc. No. 12**], Petitioner's Motion for Summary Judgment, filed November 5, 2003, [**Doc. No. 14**], Petitioner's Motion for Evidentiary Hearing, filed December 10, 2003, [**Doc. No. 16**], and Petitioner's Motion for Evidentiary Hearing, filed January 13, 2004, [**Doc. No. 17**],

On August 6, 2003, Petitioner filed a motion for summary judgment on the grounds that Respondent had failed to file an answer to his petition. On November 5, 2003, Petitioner filed another motion for summary judgment on the same grounds. The docket reveals that Respondent filed its answer as well as a motion to dismiss on August 4, 2003. Thus, there is no basis for granting Petitioner's motions for summary judgment.

On December 10, 2003, and on January 13, 2004, Petitioner filed motions seeking an evidentiary hearing on the issues raised in his petition. Subsequent to the filing of Petitioner's motions, the Court entered an Order adopting in part and rejecting in part the proposed findings and recommended disposition of the United States Magistrate Judge on Respondent's motion to dismiss. *See* September 22, 2004 Order [**Doc. No. 20**]. The Court found, in part, that a factual question had

been presented as to the cause of Petitioner's procedural default and ordered that counsel be appointed for Petitioner for further proceedings, including briefing and evidentiary hearings on the issue of cause and prejudice regarding Petitioner's procedural default. Counsel was appointed for Petitioner on September 22, 2004, but no further actions have been taken in the case.

**IT IS THEREFORE ORDERED** that Petitioner's Motion for Summary Judgment, filed August 6, 2003, [**Doc. No. 12**], and Petitioner's Motion for Summary Judgment, filed November 5, 2003, [**Doc. No. 14**], are **DENIED**.

**IT IS FURTHER ORDERED** that Petitioner, through counsel, submit his brief on the issue of procedural default on or before May 2, 2005. Respondent's response and Petitioner's reply, if any, will be due in accordance with local rules.

**IT IS FINALLY ORDERED** that Petitioner's Motion for Evidentiary Hearing, filed December 10, 2003, [**Doc. No. 16**], and Petitioner's Motion for Evidentiary Hearing, filed January 13, 2004, [**Doc. No. 17**], are denied without prejudice. An evidentiary hearing, if necessary, will be set by the Court after completion of briefing.

Dated this 22nd day of March, 2005.

  
MARTHA VÁZQUEZ  
U. S. DISTRICT COURT JUDGE

Attorney for Petitioner:

Todd Hotchkiss

Attorney for Respondent:

Elizabeth Blaisdell